



## **Concluding Out-Patient Restoration Orders: How do you know when it is over?**

# Reasons Out-Patient Restoration Services End

- Scenario 1: Defendant participates in out-patient restoration, is opined to be restored, and is adjudicated competent to stand trial.
- Scenario 2: Defendant participates in out-patient restoration, is opined incompetent but restorable in the foreseeable future. Court will likely re-issue another restoration order.
- Scenario 3: Defendant participates in out-patient restoration, is opined and adjudicated unrestorably incompetent to stand trial (URIST).
- Scenario 4: Defendant is incompetent to stand trial for the foreseeable future (URIST) and has been charged with a sexually violent offense(s) as defined in § 37.2-900.
- Scenario 5: Defendant is determined to be too psychiatrically impaired to participate in out-patient restoration services at the time of assessment. Services are not initiated.
- Scenario 6: Defendant is initially able to participate in out-patient restoration services but mental status deteriorates and is no longer suitable for out-patient restoration (needs inpatient restoration services).
- Scenario 7: Restoration provider is unable to locate the defendant, defendant fails to cooperate with out-patient competency restoration services, etc.



# SCENARIO 1: Defendant is Opined to be Restored

- At the point when CSB feels defendant has been restored, they should arrange to communicate this opinion to the court – do not need to wait for expiration of the order.
- Make sure you have addressed those issues highlighted in original CST evaluation which led evaluator to originally opine that the defendant was incompetent to stand trial.
- Even if defendant appears competent during first meeting, it is prudent to work with them over several sessions to make sure competency is sustained. Ask yourself, what happened between then (when original competency evaluation said they were incompetent) and now to make them competent. Court likely will ask this question.
- Arrange for an outcome evaluation by a qualified evaluator (see §19.2-169.1).
- Provide evaluator a synopsis of the restoration services rendered, defendant's response, and agency recommendations (that defendant likely is competent).
- If the CSB does not have their own evaluator, arrange for evaluator to conduct and send you the outcome competency evaluation – they are working as a contractor for your agency – not as a court appointed evaluator.



# SCENARIO 1: HOW DO YOU KNOW WHEN YOUR DEFENDANT IS COMPETENT?

- Able to answer factual legal questions with “sufficient” degree of accuracy (generally about 80%).
- Able to demonstrate sufficient factual understanding across sessions – retains knowledge.
- Able to apply factual knowledge about legal system to novel situations and own situation.
- Able to rationally understand key elements of legal process (for example: how guilt is determined, how sentence is determined, neutral role of judge/jury, etc.).
- As most cases are resolved via plea bargain, has sufficient factual and rational understanding of plea bargaining process.
- Appreciates adversarial nature of court proceedings (CWA is working to convict and the defense attorney working to acquit or get best outcome for defendant).
- Issues highlighted in original CST evaluation have been sufficiently resolved and/or addressed.



# SCENARIO 1: OPINION IS DEFENDANT IS NOW COMPETENT

- If both the CSB and the evaluator agree that the defendant is competent, then send a letter to the Judge (with copies to CWA & defense attorney). Attach the outcome evaluation. Consider using Sample Letter #1 from the training binder.
- If evaluator disagrees that the individual is competent, consult with the evaluator to determine why their opinion differs from yours. Either:
  - Arrange for re-evaluation
  - Continue working to resolve incompetency issues identified by the evaluator, or
  - Send a letter to court explaining difference of opinion (\*\*generally judges do not like a difference of opinion between the CSB and the outcome evaluator).
- Just because defendant is restored does not mean they may not require other ongoing CSB services.



# Sample Letter #1 – Defendant found competent to stand trial

[date]

The Honorable \_\_\_\_\_  
\_\_\_\_\_, Court  
\_\_\_\_\_, VA \_\_\_\_\_

Re: \_\_\_\_\_  
Case #: \_\_\_\_\_

Dear Judge \_\_\_\_\_:

The above captioned defendant has been receiving treatment to restore his competency to stand trial pursuant to your order, dated \_\_\_\_\_. Enclosed you will find an evaluation of competency to stand trial in accordance with requirements of Section 19.2-169.2 of the Code of Virginia, as amended. The evaluator, \_\_\_\_\_, has opined that the defendant is now competent to stand trial. Based upon our work with the defendant, we agree with this finding.

I hope that this information is sufficient for the court to proceed with a hearing. Should you have any questions or concerns in this matter, please feel free to contact me at (phone number).

Sincerely,

\_\_\_\_\_, Executive Director (or designee)  
\_\_\_\_\_, CSB/BHA

ATTACHMENT (Outcome Competency Evaluation)

cc: \_\_\_\_\_, Commonwealth's Attorney  
\_\_\_\_\_, Defense Attorney

## SCENARIO 1: After the Letter to the Court, What Does the CSB Do?

- If the defendant's competency is likely to change between the end of restoration services and the next hearing date, services should continue in order to maintain competency level while the defendant waits for the hearing to take place.
- If payment is requested when restoration services are completed, submit the Adult Competency Restoration Services Report along with copies of the cover letter to the judge and the outcome evaluation to DBHDS.

# Scenario 2: Defendant is opined incompetent but restorable in the foreseeable future

**Offering a recommendation of incompetent but restorable can be appropriate when:**

- The defendant is making progress but is still deficient in the factual information and/or rational understanding necessary for competency.
- The defendant appears to have the capacity to learn more information and achieve more understanding.
- The defendant does not have to achieve a “lawyer’s” level of proficiency but does need to be:
  - Able to rationally understand the legal process (for example: how guilt is determined, how sentence is determined, neutral role of judge/jury, etc.).
  - As most cases are resolved via plea bargain, has sufficient understanding of plea bargaining process.
  - Appreciates adversarial nature of court proceedings.
- In this case, the CSB has worked with the defendant for the full duration allowed by the court order and the defendant is making progress but is not competent at the end of the allowable time.



# Scenario 2: Defendant is opined incompetent but restorable in the foreseeable future

## **The court order time limit expires soon:**

- Arrange for an outcome evaluation with a qualified evaluator:
  - Explain your concerns regarding an adequate level of competency
  - Explain the deadline for the outcome evaluation to the evaluator
  
- Write a letter to the judge with copies to the CWA and the defense attorney, and attach the outcome evaluation. A letter should explain why the CSB and evaluator think that:
  - The defendant remains incompetent
  - The defendant is restorable with more time
  - The CSB will need another order for restoration
  - Attach a model order for § 19.2-169.2



# Sample Letter #2: Defendant is opined incompetent but restorable in the foreseeable future

[date]

The Honorable \_\_\_\_\_  
\_\_\_\_\_, Court  
\_\_\_\_\_  
\_\_\_\_\_, VA \_\_\_\_\_

Re: \_\_\_\_\_  
Case #: \_\_\_\_\_

Dear Judge \_\_\_\_\_:

The above captioned defendant has been receiving treatment to restore his competency to stand trial pursuant to your §19.2-169.2 order, dated \_\_\_\_\_. Enclosed you will find an evaluation of competency to stand trial in accordance with requirements of §19.2-169.2, as amended. The evaluator, \_\_\_\_\_, has opined that the defendant remains incompetent to stand trial at this time, but may be restorable in the near future. We agree with this finding and recommend that outpatient restoration services be continued. A model order for (continued) treatment of an incompetent defendant is enclosed for your convenience.

I hope that this information is sufficient for the court to proceed with a hearing. Should you have any questions or concerns in this matter, please feel free to contact me at (phone number).

Respectfully,

\_\_\_\_\_, Executive Director (or designee)  
\_\_\_\_\_ CSB/BHA

## ATTACHMENTS (2)

Outcome Competency Evaluation

Model court order for restoration services, §19.2-169.2

cc: \_\_\_\_\_, Commonwealth's Attorney  
\_\_\_\_\_, Defense Attorney

# SCENARIO 3: Defendant is Opined Unrestorably Incompetent to Stand Trial (URIST)

Offering opinion that defendant remains incompetent and is likely to remain so for the foreseeable future (URIST) is a serious step and should not be approached lightly – regardless of current charges:

- Need to be able to attest that there are no reasonably available treatments which could improve defendant's status to render them competent.
- Need to be able to attest to quality and quantity of services provided – would independent clinician agree you provided sufficient services?
- While current charges may be minor and competency is case-specific, a finding of unrestorability may contribute to future findings of unrestorability (even if defendant subsequently charged with serious offense).
- Many judges/CWAs dislike the recommendation of unrestorability as it leaves the case unresolved. Judge may continue the charges which can result in barriers to housing and other services for the defendant.

## SCENARIO 3: Questions to Ask Yourself Before Opining Defendant Unrestorable

### If ongoing incompetency is related to IQ/cognitive issues:

- Have you attempted to increase frequency of sessions?
- Have you used multisensory approach to teaching?
- Have you addressed any motivational issues?
- Have you considered learning styles and adjusted treatment accordingly?
- Have you engaged natural support system to learn more about defendant and used information to adjust treatment approach?



# SCENARIO 3: Questions to Ask Yourself Before Opining Defendant Unrestorable

**If ongoing incompetency is due to psychiatric symptoms:**

- Has medication regimen been adjusted? Has medication been used long enough and at sufficient dose?
- Have alternative medications been used? Do prior psychiatric records suggest different medications might be more effective?
- Are residual symptoms always present (e.g., do prior reports suggest condition is chronic vs. episodic) or has patient achieved better symptom alleviation in the past ?

## SCENARIO 3: Questions to Ask Yourself Before Opining Defendant Unrestorable

- Is there any issue/concern about medication non-compliance? How has that been addressed (PACT, injectable medications, blood levels)?
- Can other services provide more support and structure to help minimize impact of symptoms (e.g. clubhouse, skill building services, intensive case management)?
- Any doubt that symptoms could be improved via inpatient hospitalization to the point of rendering individual competent to stand trial?
- Has substance use contributed to current presentation?
- Have malingering or motivational deficit been ruled out?



## SCENARIO 3: Issues With Defendants who Appear Unrestorable

- Even though you may feel someone is unrestorable the first time you assess them, a judge is unlikely to adjudicate them unrestorable without a good faith effort to remediate the deficits.
- Should provide restoration services for at least several sessions so you can attest to what you observed with regard to their ability to learn and retain new information.
- Conversely, if you have a defendant who has a progressive illness (e.g. Parkinson's, Alzheimer's) the chances of them regaining capacity is quite low – thus there is no need to prolong restoration services, but a “good faith effort” is still required.
- Use collateral materials to help support your opinions. Are there references in the defendant's collateral materials of inability to learn non-court related concepts? Do the collateral materials document a steady cognitive decline over time?

## SCENARIO 3: Issues With Defendants who Appear Unrestorable

- Upon reaching conclusion that the individual is unrestorably incompetent, arrange for an outcome evaluation by a qualified evaluator (see §19.2-169.1).
- Provide evaluator a synopsis of the services rendered, defendant's response, and agency recommendations (that defendant likely is unrestorable).
- Remind the evaluator that pursuant to §19.2-169.3 if the opinion is that defendant is unrestorable then they must offer an opinion about disposition of defendant:
  - Release
  - Committed pursuant to §37.2-814 et seq.
  - Certified to Training Center pursuant to §37.2-806





## SCENARIO 3: Issues With Defendants who Appear Unrestorable

- Certification to Training Center has not been used in the last 15 years - with the DOJ settlement, this option likely will not be viable.
- If recommendation is for civil commitment – CSB needs to be prepared to initiate ECO/TDO process as defendant is entitled to Due Process protection/safeguards. Should ask yourself: “If well enough to remain in community for restoration, why do they now require civil commitment?”
- CSB should convey their opinions via cover letter, see examples in slides and tab 3 of the training binder.
- Be prepared for subpoena.
- Cannot consider defendant unrestorable until the judge rules. In interim you should provide some ongoing contact/services albeit focus does not need to be on restoration.



# SAMPLE LETTER #3 – Defendant is Unrestorable

(Date)

The Honorable \_\_\_\_\_  
\_\_\_\_\_, Court  
\_\_\_\_\_, VA \_\_\_\_\_

Re: \_\_\_\_\_  
Case #: \_\_\_\_\_

Dear Judge \_\_\_\_\_:

The above captioned defendant has been receiving treatment to restore his competency to stand trial pursuant to your §19.2-169.2 order, dated \_\_\_\_\_. .

Mr./ Ms. \_\_\_\_\_ continues to not understand the nature and consequences of the proceedings against him/her and continues to be unable to assist his attorney in his/her own defense. In our opinion, he/she remains incompetent to stand trial and will remain incompetent for the foreseeable future. Enclosed you will find an evaluation of competency to stand trial in accordance with requirements of §19.2-169.2, as amended. The evaluator, \_\_\_\_\_, has opined that (insert evaluator's opinion).

Our recommendation is that Mr./ Ms. \_\_\_\_\_ does not appear to meet the criteria for commitment pursuant to §§ 37.2-814, 37.2-900 or 37.2-806. Should the defendant be released, community services are available (clarify what is available) to the defendant. I hope that this information is sufficient for the court to proceed with a hearing. Should you have any questions or concerns in this matter, please feel free to contact me at (phone number).

Sincerely,

\_\_\_\_\_, Executive Director (or designee)  
\_\_\_\_\_, CSB/BHA

ATTACHMENT (Outcome Competency Evaluation)

cc: \_\_\_\_\_, Commonwealth's Attorney  
\_\_\_\_\_, Defense Attorney



## SCENARIO 3: After the Letter to the Court, What Does the CSB Do?

- If judge disagrees and issues renewed outpatient restoration order, then CSB must continue working with defendant. CSB should strategize how to alter services to achieve desired outcome. May be prudent to ask defense attorney if the judge indicated why he/she disagreed with CSB and evaluator.
- If judge agrees and issues URIST order, then CSB should send Adult Competency Restoration Services Report along with a cover letter to the judge and Outcome Evaluation to DBHDS.
- While defendant was deemed URIST that does not negate fact they still may need CSB or other human services.

## Scenario 4: Defendant is incompetent to stand trial (URIST) AND has been charged with a sexually violent offense(s) as defined in § 37.2-900.

- Everything covered in the previous scenario applies to this scenario as well.
- The defendant is considered unrestorably incompetent by the CSB and by the outcome evaluator.
- The only difference is that the “defendant has been charged with a sexually violent offense as defined in § 37.2-900, he shall be screened pursuant to the procedures set forth in §§ 37.2-903 and 37.2-904.”
- The only difference in the CSB’s role is to indicate in the cover letter that the defendant’s charges may make them eligible for commitment under code sections §§ 37.2-903 and 37.2-904.

## SCENARIO 4: Defendant is incompetent to stand trial (URIST) AND has been charged with a sexually violent offense(s) as defined in § 37.2-900.

- For those charged with some form of sexual offense, the restoration counselor should evaluate if the charge is a sexually violent offense:

Code Section	Charge
18-54	Rape, 1950 Code
18.1-44	Rape, 1950 Code
18.2-31 (5)	Capital Murder with sexual assault
18.2-61	Rape
18.2-67.1	Forcible Sodomy
18.2-67.2	Object Sexual Penetration
18.2-48 (ii)	Abduction with sexual intent
18.2-48 (iii)	Abduction of a child <16 with intent for concubinage or prostitution
18.2-63	Carnal Knowledge of child 13 to 15
18.2-64.1	Carnal Knowledge of minor in care by caregiver
18.2-67.3	Aggravated Sexual Battery
18.2-31 (1)	Capital Murder in commission of abduction with intent to defile
18.2-32	1st or 2nd degree murder when present with intent to rape, forcible sodomy or inanimate or animate object sexual penetration
	With conspiracy or attempt to commit or attempt any of the above offenses
	Forcible sexual offense committed prior to July 1, 1981 that constitutes forcible sodomy, object sexual penetration or aggravated sexual battery



**SCENARIO 4:** Defendant is incompetent to stand trial (URIST) AND has been charged with a sexually violent offense(s) as defined in § 37.2-900.

- If offense qualifies as Sexually Violent Offense, evaluation for SVP commitment is automatic and the court will address that process. Your cover letter should just reference the existence of what appears to be a qualifying offense.
- Just because person has sex offenses in background does not mean they must be evaluated. Determination is based on current offense (for those being referred due to URIST finding).

# Sample Letter #4: Defendant is incompetent to stand trial (URIST) AND has been charged with a sexually violent offense(s) as defined in § 37.2-900

(Date) \_\_\_\_\_

The Honorable \_\_\_\_\_  
\_\_\_\_\_, Court  
\_\_\_\_\_, VA \_\_\_\_\_

Re: \_\_\_\_\_  
Case #: \_\_\_\_\_

Dear Judge \_\_\_\_\_:

The above captioned defendant has been receiving treatment to restore his competency to stand trial pursuant to your §19.2-169.2 order, dated \_\_\_\_\_.

Mr./ Ms. \_\_\_\_\_ continues to not understand the nature and consequences of the proceedings against him/her and continues to be unable to assist his attorney in his/her own defense. In our opinion, he/she remains incompetent to stand trial and will remain incompetent for the foreseeable future. Enclosed you will find an evaluation of competency to stand trial in accordance with requirements of §19.2-169.2, as amended. The evaluator, \_\_\_\_\_, has opined that (insert evaluator's opinion).

Our recommendation is that Mr./ Ms. \_\_\_\_\_ does not appear to meet the criteria for commitment pursuant to §§ 37.2-814, 37.2-900 or 37.2-806. Should the defendant be released, Community services are available (clarify what is available) to the defendant. I hope that this information is sufficient for the court to proceed with a hearing.

It is our understanding Mr. / Ms. \_\_\_\_\_ has been charged with a sexually violent offense, as defined in § 37.2-900. §19.2-169.3 states that he shall be screened pursuant to the procedures set forth in §§ 37.2-903 and 37.2-904.

Should you have any questions or concerns in this matter, please feel free to contact me at (phone number).

Sincerely,

\_\_\_\_\_, Executive Director (or designee)  
\_\_\_\_\_, CSB/BHA

ATTACHMENT (Outcome Competency Evaluation)

cc: \_\_\_\_\_, Commonwealth's Attorney  
\_\_\_\_\_, Defense Attorney

## Scenario 4: After the Letter to the Court, What Does the CSB Do?

- This is usually a very serious matter to the court, the judge will scrutinize the available facts and the attorney will argue the facts.
- Be prepared for a subpoena to testify.
- If the judge agrees and issues a URIST order for the defendant charged with a qualifying sexually violent offense, the CSB should send Adult Competency Restoration Services Report along with a cover letter to the judge and Outcome Evaluation to DBHDS.





## SCENARIO 5: Defendant is too Psychiatrically Unstable to Initiate Restoration Services

- During the initial assessment, determine if defendant can receive out-patient psychiatric services (from jail or from CSB) and be stabilized.
- If defendant is psychiatrically unstable and is unable or unwilling to consent to psychiatric care (after repeated encouragement), then write to judge with a copy to the defense attorney and Commonwealth's attorney.
- Explain that the Court initially found defendant appropriate for outpatient restoration at the time restoration was ordered. However, the defendant is currently in need of inpatient care and explain why.
- Ask judge to issue amended order for inpatient restoration.

## SCENARIO 5: Defendant is too Psychiatrically Unstable to Initiate Restoration Services

- A call to defense attorney might expedite a hearing on this issue (and to obtain amended order for inpatient restoration).
- In this situation, medication is the focus of restoration services until an amended order is issued or judge determines outpatient restoration will continue.
- No need for “outcome evaluation” as restoration plan was not developed due to psychiatric instability.



# SAMPLE LETTER #5 – Too Psychiatrically Unstable for O-P Restoration Services

[date]

The Honorable \_\_\_\_\_  
\_\_\_\_\_, Court  
\_\_\_\_\_, VA \_\_\_\_\_

Re: \_\_\_\_\_  
Case #: \_\_\_\_\_

Dear Judge \_\_\_\_\_:

In a court order dated \_\_\_\_\_, you ordered Mr./ Ms. \_\_\_\_\_ to received treatment in an attempt to restore his/her competency to stand trial pursuant to Virginia Code § 19.2-169.2. Upon receipt of the court order, I conducted an initial assessment of Mr./ Ms. \_\_\_\_\_. During the course of my initial assessment it became clear Mr./Ms. \_\_\_\_\_ is currently too Psychiatrically impaired to receive outpatient competency restoration services.

This paragraph should describe the specific conditions that made them psychiatrically unsuitable for outpatient restoration. Some examples are: Mr./ Ms. \_\_\_\_\_ is evidencing significant symptoms of psychosis to include \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. Mr./ Ms. \_\_\_\_\_ refused to be evaluated by \_\_\_\_\_ CSB's psychiatrist for a medication consultation. Mr./Ms. \_\_\_\_\_ indicated he/ she would not voluntarily consent to taking prescribed medications.

As a result of his/her current mental status and his/her unwillingness to receive psychiatric services, it is my professional opinion Mr./Ms. \_\_\_\_\_ is not an appropriate candidate for outpatient competency restoration services. My recommendation is that the Court amend the current court order and order Mr./ Ms. \_\_\_\_\_ to receive competency restoration services on an inpatient basis at a DBHDS hospital. If you have any questions, please call me at (phone number).

Sincerely,

\_\_\_\_\_, Executive Director (or designee)  
\_\_\_\_\_ CSB/BHA

ATTACHMENT: Model order for restoration pursuant to § 19.2-169.2

cc: \_\_\_\_\_, Commonwealth's Attorney  
\_\_\_\_\_, Defense Attorney



## SCENARIO 5: After the Letter to the Court, What Does the CSB Do?

- If judge changes the order to inpatient restoration or disposes of case in some other manner, complete Adult Competency Restoration Services Report and submit to DBHDS along with a letter to the judge.
- If judge orders CSB to continue outpatient, then initiate restoration services with a focus on psychiatric resources and wait to submit the Adult Competency Restoration Services Report, along with the letter to the judge and outcome evaluation.

## SCENARIO 6: Defendant is Initially Able to Participate but Mental Status Deteriorates & is No Longer is Suitable for O-P Restoration

- If defendant's mental status changes and no longer appears appropriate for out-patient restoration:
  - Try to determine reason for change.
  - If change in psychiatric treatment could make defendant more amenable/appropriate for outpatient restoration, try to adjust treatment.
- If defendant is still not amenable to out-patient services after adjusted psychiatric treatment, then arrange for an "outcome evaluation." You will need to provide outcome evaluator with a synopsis of what has transpired and your agency recommendations (no longer suitable for out-patient restoration).



## SCENARIO 6: Defendant is Initially Able to Participate but Mental Status Deteriorates & is No Longer is Suitable for O-P Restoration

- Attach cover letter to outcome evaluation and send to judge, with copies to Commonwealth Attorney and defense attorney (see sample letter).
- Make sure you read outcome evaluation and that your cover letter is consistent with findings of outcome evaluation or you justify the difference in opinion.
- Continue to provide services, especially psychiatric services, while awaiting court to rule.

# SAMPLE LETTER #6 – Initially able to participate but mental status deteriorated & is no longer suitable for O-P restoration

[date]

The Honorable \_\_\_\_\_  
\_\_\_\_\_, Court  
\_\_\_\_\_, VA \_\_\_\_\_

Re: \_\_\_\_\_  
Case #: \_\_\_\_\_

Dear Judge \_\_\_\_\_:

In a court order dated \_\_\_\_\_, you ordered Mr./ Ms. \_\_\_\_\_ to received treatment in an attempt to restore his/her competency to stand trial pursuant to Virginia Code § 19.2-169.2. Upon receipt of the court order, I conducted an initial assessment of Mr./ Ms. \_\_\_\_\_ and began providing restoration services. Over time, Mr./ Ms. \_\_\_\_\_'s mental status began to deteriorate.

*This paragraph should describe the specific conditions that led to your recommendation. For example: Mr./ Ms. \_\_\_\_\_ began evidencing significant symptoms of psychosis to include \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. Mr./ Ms. \_\_\_\_\_ refused to be evaluated by \_\_\_\_\_ CSB's psychiatrist for a medication consultation (or: Despite agreeing to receive psychiatric services, Mr./ Ms. \_\_\_\_\_'s condition did not improve).*

As a result of his/her current mental status and our inability to fully stabilize his/her condition on an outpatient basis, it is my professional opinion Mr./Ms. \_\_\_\_\_ is no longer are appropriate candidate for outpatient competency restoration services. Dr. \_\_\_\_\_ provided an outcome evaluation and agrees with this recommendation for inpatient restoration. Please see their evaluation attached.

I recommend the Court amend the current court order and order Mr./ Ms. \_\_\_\_\_ to receive competency restoration services on an inpatient basis at a DBHDS hospital. If you have any questions, please call me at (phone number).

Sincerely,

\_\_\_\_\_, Executive Director (or designee)  
\_\_\_\_\_, CSB/BHA

ATTACHMENT (Outcome Competency Evaluation)

cc: \_\_\_\_\_, Commonwealth's Attorney  
\_\_\_\_\_, Defense Attorney

## SCENARIO 6: After the Letter to the Court, What Does the CSB Do?

- If judge changes the order to inpatient restoration or disposes of case in some other manner, complete Adult Competency Restoration Services Report (located on the DBHDS website), along with a letter to the judge and the outcome evaluation, and submit to DBHDS.
- If judge orders CSB to continue outpatient, then continue restoration attempts and wait to submit the Adult Competency Restoration Services Report, etc.



## SCENARIO 7: Unable to locate the defendant or defendant fails to cooperate with out-patient restoration

Restoration counselor must make reasonable efforts to contact and engage the defendant:

- If unable to contact by phone, send a letter introducing yourself, explaining that services are being provided in response to court order, and asking that the defendant contact you.
- If defendant still does not respond, contact defense attorney and ask them to help engage defendant.

# SCENARIO 7: CLIENT REFUSES TO COOPERATE

## Ways to Leverage Engagement

- Educate defendant about the possible consequences of non compliance with court order :
  - Contempt of court – possible jail time
  - Revocation of bond – possible jail time
  - Judge orders inpatient restoration – lose freedom and benefits may be suspended
  - Judge may find defendant competent and proceed to trial
- If defendant has support system, try to engage support system and educate them about consequences of defendant's non-compliance
- If defendant has relationship with other CSB service providers, see if they can help engage defendant
- Some defendants mistakenly think that if they fail to cooperate the impending charges might be dropped – educate them about the unlikelihood of this outcome



# SCENARIO 7: DEFENDANT REFUSES TO COOPERATE

If defendant still has not engaged, send a letter to judge (with copies to Commonwealth Attorney and defense attorney) outlining that defendant has not engaged in treatment and steps you've taken to remediate this. Communicate to the judge your impressions regarding their refusal and consider the following:

- Is it volitional? If so, other court interventions may be needed to motivate the defendant to participate.
- Is it related to ID issues? If so, the court may need to tell existing supports that the defendant must participate and that there are consequences of future non-compliance.
- Is it related to SA issues? If so, the court may mandate engagement in SA services and/or incarcerate individual to force sobriety.
- Is it MI related? If so, the court may either mandate engagement in outpatient services or order inpatient treatment.



# Sample Letter #7 – Unable to Initiate Restoration Services due to lack of contact or lack of defendant cooperation

[date]

The Honorable \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, VA \_\_\_\_\_

Re: \_\_\_\_\_  
Case #: \_\_\_\_\_

Dear Judge \_\_\_\_\_:

In a court order dated \_\_\_\_\_, you ordered Mr./Ms. \_\_\_\_\_ to received treatment in an attempt to restore his/her competency to stand trial pursuant to Virginia Code § 19.2-169.2. Upon receipt of the court order, I attempted to communicate with Mr./ Ms. \_\_\_\_\_ at the address/phone number provided. I have (*sent letter/left phone message*) but Mr./Ms. \_\_\_\_\_ has not responded (*or has refused to cooperate, if that is the issue*). I have spoken with Mr./Ms. \_\_\_\_\_'s attorney to enlist his/her help to locate (*or engage, if the issue is defendant cooperation*) Mr./Ms. \_\_\_\_\_ to no avail. At this point in time, I am unable to initiate competency restoration services with Mr./Ms. \_\_\_\_\_.

If the court is able to address Mr./Ms. \_\_\_\_\_'s non-compliance with the court's order, the \_\_\_\_\_ CSB/BHA would be willing to reinstate restoration efforts should we receive further instruction from the court. At this point in time, we are unable to proceed.

If you have any questions, please feel free to contact me at (phone number).

Sincerely,

\_\_\_\_\_, Executive Director (or designee)  
\_\_\_\_\_, CSB/BHA

cc: \_\_\_\_\_, Attorney for the Commonwealth  
\_\_\_\_\_, Attorney for the Defense

# SCENARIO 7: After the Letter to the Court, What Does the CSB Do?

- If judge orders inpatient restoration or disposes of case in some other manner, complete Adult Competency Restoration Services Report (located on the DBHDS website) and submit to DBHDS along with the cover letter to the judge.
- If judge orders CSB to continue outpatient, then again attempt to engage defendant and wait to submit the Adult Competency Restoration Services Report.

# Other Scenarios: Unusual

- Existence of out-patient restoration order does not preclude DBHDS inpatient admission under emergency treatment or civil commitment code sections §19.2-169.6 (in jail) or §37.2-814 et seq.(on bond).
- If a defendant who is receiving out-patient restoration services is hospitalized in a state hospital under one of these two code sections, the out-patient restoration counselor should contact the hospital to advise them of out-patient restoration status and to agree on a plan of action:
  - Will the O-P restoration coordinator pursue a change to an inpatient restoration order?
  - OR
  - Will DBHDS hospital only keep the patient under current commitment status and discharge when ready, then O-P Restoration resumes?



# Other Scenarios: Unusual

- In scenario described in previous bullet - if decision is made that it would be best for patient to receive restoration services on inpatient basis, the CSB O-P restoration coordinator must write to court and explain what has happened and offer recommendations to Court.
- CSB is only discharged of their responsibility when new order for out-patient restoration is issued.
- Private hospitals do not have the staff or training required to provide restoration services.

# IN CONCLUSION: Nothing is “normal” in restoration

- There will always be exceptions to rules and unique cases.
- State hospital forensic coordinators are available to consult and offer guidance. Historically state hospitals have provided the bulk of restoration so they have been exposed to unique situations.
- Office of Forensic Services (Kathleen Sadler or Sarah Shrum) are available for consultation and problem-solving.